



U. S. Department of Commerce
Annual Report on the No FEAR Act

2018

The Department of Commerce is pleased to submit this annual report in accordance with Section 5, Part 724 of the Code of Federal Regulations (5 C.F.R. § 724), Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act. The report is divided into seven sections that track the reporting areas required by the regulations: pending and resolved federal court cases; administrative equal employment opportunity complaints; disciplinary actions resulting from violations of nondiscrimination and whistleblower protection statutes; agency disciplinary policies; trend analyses of court cases and administrative complaints; a budgetary impact analysis; and the agency training plan.

This report does not include data or responses from the U.S. Patent and Trademark Office (USPTO). The USPTO is submitting its own report under separate cover.

Part 1. The Number of Federal Court Cases Pending and Resolved

Section 5, Parts 724.302(a)(1) through (3) of the Code of Federal Regulations require agencies to report:

(1) The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them as defined in Sec. 724.102 of subpart A of this part in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved;

(2) In the aggregate, for the cases identified in paragraph (a)(1) of this section and separated by provision(s) of law involved:

(i) The status or disposition (including settlement);

(ii) The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in Sec. 724.102 of subpart A of this part;

(iii) The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated;

(3) In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.

Response: The statutes applicable to this report are:

Section 2302(b)(1) of the Civil Service Reform Act, which prohibits discrimination in personnel actions based on: race, color, religion, sex, or national origin (as prohibited by Title VII of the Civil Rights Act of 1964); age (as prohibited by sections 12 and 15 of the Age Discrimination in Employment Act of 1967); sex (as prohibited by section 6(d) of the Fair Labor Standards Act of 1938); handicapping condition (as prohibited by section 501 of the Rehabilitation Act of 1973); and marital status or political affiliation.

Section 2302(b)(9) of the Civil Service Reform Act, which prohibits taking a personnel action based on an employee's exercise of any appeal, complaint, or grievance right; testimony or other lawful assistance in the exercise of any appeal, complaint, or grievance right; cooperation with or

disclosure to the agency ' s Inspector General or the Office of Special Counsel; or refusal to obey an illegal order.

Section 6(d)(1) of the Fair Labor Standards Act of 1938, also known as the Equal Pay Act, which prohibits discrimination “between employees on the basis of sex by paying wages to employees ... at a rate less than the rate [paid] to employees of the opposite sex ... for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions....” 29 U.S.C. 206(d)(1)

The Age Discrimination in Employment Act (ADEA) of 1967, as amended, which states that, "All personnel actions affecting employees or applicants for employment who are at least 40 years of age ... in executive agencies ... shall be made free from any discrimination based on age." 29 U.S.C. ' 633a(a).

Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., which prohibits discrimination on the basis of disability and requires agencies of the Federal government to make reasonable accommodation to the known physical or mental limitations of qualified employees with disabilities, unless the agency can demonstrate that accommodation would prove to be an "undue hardship."

Section 717 of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination based on race, color, religion, sex, or national origin against federal employees in executive agencies. 42 U.S.C. ' 2000e-16(a). Under Title VII, it is also unlawful "for an employer to discriminate against any of its employees because [the employee] has opposed any practice made an unlawful employment practice by Title VII, or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

Tables showing the number and disposition of civil actions filed in a United States District Court under any of these statutes appear below:

Table 1.A: Federal Court Litigation, FY 2018

Statute	Number of Cases		Final Judgments Against Agency	Settled	Employees Disciplined
	Pending	Resolved			
Civil Service Reform Act 5 U.S.C. 2302(b)(1) Prohibited Personnel Practices	Pending	0	0	0	0
	Resolved	0			
Civil Service Reform Act 5 U.S.C. 2302(b)(9) Whistleblowing	Pending	0	0	0	0
	Resolved	0			
Fair Labor Standards Act 29 U.S.C. 206(d) and Title VII	Pending	0	0	0	0
	Resolved	0			
Age Discrimination in Employment Act of 1967 29 U.S.C. 631 and 633a	Pending	0	0	0	0
	Resolved	0			
Rehabilitation Act of 1973 29 U.S.C. 791	Pending	0	0	0	0
	Resolved	0			
Civil Rights Act of 1964 (Title VII) 42 U.S.C. 2000e-16	Pending	7	0	2	0
	Resolved	5			
Title VII and ADEA	Pending	6	0	0	0
	Resolved	3			
Title VII and ADEA and Rehabilitation Act	Pending	2	0	0	0
	Resolved	0			
Title VII and Rehabilitation Act	Pending	2	0	0	0
	Resolved	1			
ADEA and Rehabilitation Act	Pending	0	0	0	0
	Resolved	0			
Title VII and CSRA (Whistleblowing)	Pending	0	0	0	0
	Resolved	0			
Total	Pending	17	0	2	0
	Resolved	9			

Table 1.B: Judgment Fund Expenditures, 2018

Judgment Fund Expenditures 2018			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
	\$0.00	\$142,000.00	\$0.00

Part 2. Administrative Equal Employment Opportunity Complaint Data

Section 5, Part 724.302(a)(4) of the Code of Federal Regulations requires agencies to report:

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act).

Response: See the following tables.

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
	2013	2014	2015	2016	2017	
Number of Complaints Filed	168	139	165	188	178	186
Number of Complainants	153	135	155	178	174	114
Repeat Filers	13	6	9	10	4	7
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
	2013	2014	2015	2016	2017	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	60	46	53	80	60	76
Color	20	7	18	24	28	35
Religion	16	5	12	13	7	15
Reprisal	104	68	101	106	100	124
Sex	45	41	53	80	66	83
PDA	1	1	1	1	3	1
National Origin	28	16	21	33	20	29
Equal Pay Act	0	1	1	1	1	0
Age	51	48	62	74	66	75
Disability	46	54	62	64	71	94

Genetics	1	1	1	1	1	1
Non-EEO	10	5	6	6	5	5

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2013	2014	2015	2016	2017	
Appointment/Hire	4	7	17	10	10	16
Assignment of Duties	24	35	47	39	46	64
Awards	2	1	4	2	6	8
Conversion to Full Time/Perm Status	0	0	0	0	0	0
Disciplinary Action						
Demotion	1	0	1	1	0	0
Reprimand	12	14	9	15	23	8
Suspension	13	6	11	5	14	11
Removal	0	1	1	3	0	0
Other	0	3	0	3	3	0
Duty Hours	0	2	1	1	1	0
Perf. Eval./ Appraisal	30	32	40	42	51	58
Examination/Test	0	0	0	0	1	0
Harassment						
Non-Sexual	63	64	92	101	98	108
Sexual	3	5	8	2	10	4
Medical Examination	0	0	0	0	0	0
Pay including overtime	3	5	7	8	11	1
Promotion/Non-Selection	16	21	23	21	21	29
Reassignment						
Denied	2	2	2	3	7	14
Directed	3	5	3	5	2	6

Reasonable Accommodation Disability	12	18	28	27	30	35
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	2	1
Retirement	0	0	0	1	2	2
Sex-Stereotyping	0	0	0	0	0	0
Telework	0	0	0	20	18	19
Termination	26	19	23	39	24	28
Terms/Conditions of Employment	11	28	37	27	43	44
Time and Attendance	20	25	22	22	40	31
Training	7	9	11	16	15	15
Other						
User Defined - Other 1	0	0	0	1	0	2
User Defined - Other 2	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
	2013	2014	2015	2016	2017	
Complaints pending during fiscal year						
Average number of days in investigation	139	190.36	179.06	183.44	179.64	111.55
Average number of days in final action	257	38.46	54.29	25.91	21.78	109.79

Complaint pending during fiscal year where hearing was requested												
Average number of days in investigation	160	191.08	196.36	195.67	182.96	193.56						
Average number of days in final action	137.16	20.80	16.61	12.06	13.79	8.66						
Complaint pending during fiscal year where hearing was not requested												
Average number of days in investigation	118	189.55	163.53	172.57	175.31	173.32						
Average number of days in final action	238	52.78	84.23	36.27	28.12	29.72						
Complaints Dismissed by Agency	Comparative Data											
	Previous Fiscal Year Data										2018Thru09-30	
	2013		2014		2015		2016		2017		30	
Total Complaints Dismissed by Agency	0		1		1		1		1		8	
Average days pending prior to dismissal	0		15		1		9		5		11.75	
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	7		9		7		7		7		14	
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2018Thru09-30	
	2013		2014		2015		2016		2017		30	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	3	100	0	0	4	100	0	0	3	100	1	100
Without	1	33	0	0	3	75	0	0	2	67	1	100

Hearing												
With Hearing	2	66	0	0	1	25	0	0	1	33	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2018Thru09-30	
	2013		2014		2015		2016		2017			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
	Total Number Findings	3	100	0	0	4	100	0	0	3	100	1
Race	1	33	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	33	0	0	3	75	0	100	2	40	0	0
Sex	0	0	0	0	0	0	0	0	1	20	1	100
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	1	25	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	1	20	0	0
Disability	1	33	0	0	0	0	0	0	1	20	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings After Hearing	2	100	0	100	1	100	0	0	1	100	0	0
Race	1	50	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	50	0	0	1	50	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	1	50	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	1	100	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	1	100	0	0	3	100	1	100	2	100	1	100
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	3	75	0	0	1	33	0	0
Sex	0	0	0	0	0	0	0	0	1	33	1	100
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	1	25	1	100	1	33	0	0

Disability	1	100	1	100	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2018Thru09-30	
	2013		2014		2015		2016		2017			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	3		0		4		0		3		1	
Appointment/Hire	0	0	0	0	0	0	0	0	1	33	0	0
Assignment of Duties	0	0	0	0	1	25	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	1	25	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	1	33	0	0	3	75	0	0	1	33	1	100
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0

Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	1	33	0	0	0	0	0	0	1	33	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	1	25	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	1	33	0	0
Other - User Define												
User Defined - Other 1	1	33	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	1		0		0		0		1		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of	0	0	0	0	0	0	0	0	0	0	0	0

Duties												
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	1	50	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	1	50	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	1	100	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0

Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	1		0		3		0		2		1	
Appointment/Hire	0	0	0	0	0	0	0	0	1	25	0	0
Assignment of Duties	0	0	0	0	1	20	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	1	17	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0

Perf. Eval./ Appraisal	0	0	0	0	1	17	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	2	33	0	0	1	25	1	100
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non- Selection	0	0	0	0	0	0	0	0	1	25	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	1	100	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	1	17	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	1	25	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0

User Defined - Other 2	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
	2013	2014	2015	2016	2017	
Total complaints from previous Fiscal Years	177	130	125	119	242	247
Total Complainants	167	115	116	111	218	114
Number complaints pending						
Investigation	1	0	0	0	19	87
ROI issued, pending Complainant's action	0	0	0	0	6	0
Hearing	138	93	112	104	183	135
Final Agency Action	5	2	10	10	4	11
Appeal with EEOC Office of Federal Operations	33	35	3	13	30	13

Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2018Thru09-30
	2013	2014	2015	2016	2017	
Pending Complaints Where Investigations Exceed Required Time Frames	3	0	0	0	0	0

Part 3. Disciplinary Actions

Section 5, Part 724.302(a)(5) of the Code of Federal Regulations requires agencies to report:

Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

Response: Consistent with the fact that there were no final judgments of discrimination against the Department in Fiscal Year 2018, no employees were disciplined in connection with cases in Federal court.

Part 4. Disciplinary Policies

Section 5, Part 724.302(a)(6) of the Code of Federal Regulations requires agencies to report:

A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.

Response: The Department's policy for taking disciplinary action against Federal Employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws is set forth in Department Administrative Order 202-751 (DAO 202-751), a copy of which is available at http://www.osec.doc.gov/opog/dmp/daos/dao202_751.html

The relevant offenses appear at Numbers 36, 42, 45, and 46 on the Table of Offenses and Penalties:

- Harassing, threatening or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights (5 days suspension to removal);
- Misrepresentation, falsification, or omission of material fact in connection with application, employment or any record, report, investigation or other proceeding (written reprimand to removal);
- Discrimination. As used in the Table of Offenses and Penalties, discrimination refers to specific acts taken by an employee in the performance of his/her official duties which discriminate against one or more individuals on the basis of race, sex, religion, color, age, national origin, disability, marital status, or political affiliation. (5 day suspension to removal); and
- Refusal to answer appropriate interrogation in a properly authorized inquiry (written reprimand to removal).

Departmental Administrative Order 202-955, a copy of which is available at http://www.osec.doc.gov/opog/dmp/daos/dao202_955.html, also provides an expedited process for reviewing allegations of harassment, terminating actual incidents of harassment, and taking disciplinary actions as appropriate, which includes stopping any ongoing harassment and initiating disciplinary or adverse action when an inquiry results in a finding that misconduct has occurred.

Part 5. Trend Analyses

Section 5, Part 724.302(a)(7) of the Code of Federal Regulations requires agencies to report:

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:

- (i) An examination of trends;
- (ii) Causal analysis;
- (iii) Practical knowledge gained through experience; and
- (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace;

Part 5.a: Civil Actions Filed in Federal Court

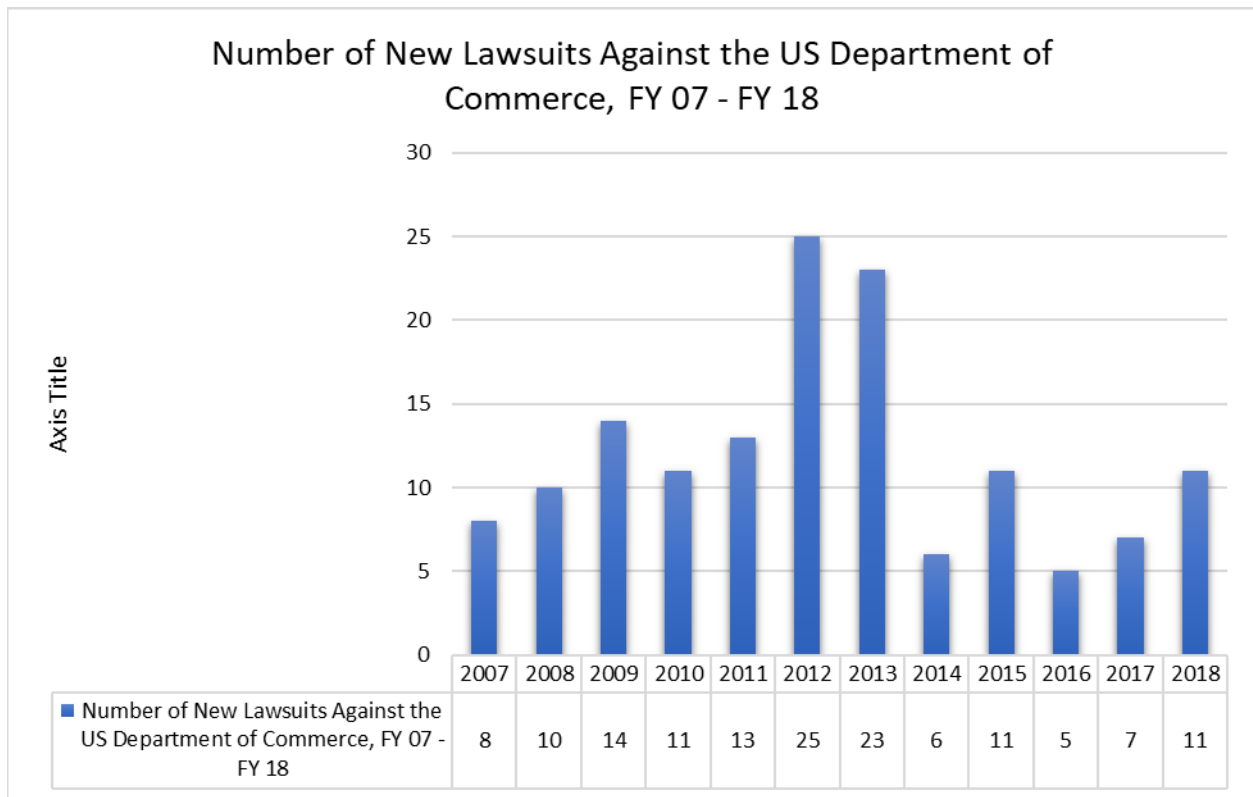
For Fiscal Year 2018, the Department of Commerce litigated 26 cases in Federal district and appellate courts. Nine of those cases have been resolved, leaving 17 cases pending. At the time of this report, there are 16 cases pending.

Of the nine cases resolved, the Department settled two of them, and there were no final judgments of discrimination against the Department. Consequently, there was no case requiring the discipline of any Department employee.

Analysis of Trends:

During the reporting period, there were no lawsuits brought against the Department based on a violation of 5 U.S.C. 2302(b)(1) (Civil Service Reform Act) or 29 U.S.C. 206(d) (pay discrimination). The majority of lawsuits against the Department are based on an alleged violation of Title VII of the Civil Rights Act of 1964. There were no lawsuits brought against the Department based on a violation of whistleblower statutes.

As shown in the chart below, there is an uneven, but steady trend in the number of new antidiscrimination and whistleblower protection lawsuits brought against the Department over the last ten years. Between FY 07 and FY 18, the average number of new lawsuits brought against the Department was 12. Therefore, in FY 18, the number of new law suits (11), was just below this average.



Part 5.b: Administrative EEO Complaints

Number of filings:

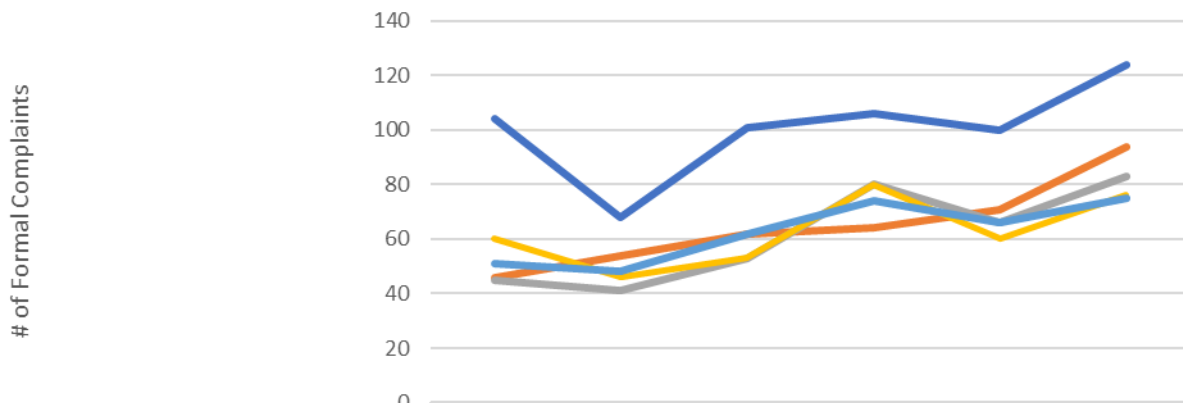
Formal EEO complaint filings at the Department of Commerce (excluding PTO) increased by 4.3% in FY 18, rising from 178 in FY 17 to 186. However, the number of formal complaints was within the typical range of complaint filings. The average number of formal complaint filings between FY 13 and FY 18 was 171. Over the last six years, the lowest number of formal complaints occurred in FY 14, when 139 formal complaints were filed. The number of formal complaints peaked in FY 16 when 188 formal complaints were filed.

Bases of Complaints:

The top bases of complaints overall during FY 2017 were reprisal (56%), disability (39%) age and sex (tied at 47%), and race (34%). Reprisal claims are steady compared to 2016. Age complaints are up 8% from FY 2016. Disability and sex-based complaints rose slightly.

The top bases of FY 2018 are reprisal (67%), disability (51%), sex (45%) followed by race (40%).

Top Five Bases of Formal Complaints Filed at the US Department of Commerce Between FY 13 and FY 18



	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
(1) Number of Complaints on Basis of Reprisal	104	68	101	106	100	124
(2) Number of Complaints on Basis of Disability	46	54	62	64	71	94
(3) Number of Complaints on Basis of Sex	45	41	53	80	66	83
(4) Number of Complaints on Basis of Race	60	46	53	80	60	76
(5) Number of Complaints on the Basis of Age	51	48	62	74	66	75

Reprisal, disability, sex, race, sex and age have consistently been the top bases in formal EEO Complaints filed at the Department of Commerce over the last five years. In FY 18, the percentage of complaints based on disability increased, rising from 40% of complaints to 51% in FY 18. This represents a 11% increase. The number of complaints based on reprisal has consistently been the number one basis for the last five years. The percentage of complaints filed on the basis of reprisal increase from 56% in FY 17 to 67%. This represents a 11% increase. The percentage of complaints filed on the other bases also increased, but at a smaller percentage. The percentage of sex based complaints increased by 8%, race by 6%, and age by 3%.

Issues in Complaints:

In FY 2018, the top six issues were harassment (non-sexual) at 58%, assignment of duties (34%), performance/evaluation (31%), terms/conditions of employment (24%), reasonable accommodation (19%) and termination (14%). The top four bases (non-sexual harassment, assignment of duties, performance/evaluations and terms and conditions of employment) are the same as FY 17. However, in FY 18 reasonable accommodation moves back up to the fourth top basis, followed by termination as the sixth top basis.

Termination has been in the top bases since FY 16. This is because the majority of the terminations were attributable to the Census Bureau, which hires temporary employees for its regular survey work and preparatory operations for the upcoming Decennial Census.

Realignment among the non-Decennial field staff and test operations for the 2020 Decennial contributed to the rise in termination complaints.

Findings of Discrimination

The Office of Civil Rights issued one decision finding discrimination in FY 2018. Complainant, Administrative Support Assistant, Wilmington, North Carolina Weather Forecast Office, Eastern Region, National Weather Service, National Oceanic and Atmospheric Administration, a final agency decision without a hearing was issued. A finding of discrimination was issued regarding inappropriate sexual innuendos in Complainant's presence, based on Complainant's sex (female). The Agency was ordered to provide the Wilmington Weather Forecast Office at least eight hours of training with respect to preventing and eliminating harassment in the workplace and creating a respectful workplace for all employees; posting a notice of discrimination in the workplace; consider taking disciplinary action against management; Complainant awarded \$39,283.99 in damages; attorney's fees of \$2,350; and restoration of 100 hours of annual leave. Management is no longer employed by the agency he was terminated for inappropriate conduct not having to do with this EEO complaint.

Part 6. Budgetary Adjustments

Section 5, Part 724.302(a)(8) requires agencies to report:

For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Response: The Department of Commerce has not made or needed to make adjustments to its budget to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Part 7. Training Plan

Section 5, Part 724.302(a)(9) requires agencies to report:

The agency's written plan developed under 5 C.F.R. § 724.203(a) to train its employees.

Response:

Following is the U.S. Department of Commerce training plan for the No FEAR Act training for FY18.

- Department employees completed the mandatory No FEAR Act Training through the Commerce Learning Center platform and bureau-specific e-learning systems. Employees

who do not have access to the CLC (mostly temporary, seasonal, and or field employees at Census) have access to the No FEAR briefing via other platforms.

- Information about the No FEAR Act training module remained posted on the Department's Office of Civil Rights webpage and included a reminder to new employees of the requirement to take the training within 90 days of entering on duty.
- For the 2016-2018 training cycle, between January 2017 and February 2019, a total of 32,930 employees completed the No FEAR Act training. This represents 92.48% of the 35,609 employees required to take the training (excluding PTO). The training completion rate exceeds the Department of Commerce's average/normal completion rate for mandatory training, which is 88%.
- The Department's Office of Civil Rights partnered with the Census Bureau to create a module that would be used for the Decennial workforce and will be translated into Spanish for Spanish-speaking employees throughout the Department of Commerce.

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